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**BEFORE THE CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD**

In the Matter of  
  
OLIN CORPORATION,  
  
Petitioner,

CASE NO. \_\_\_\_\_

OLIN CORPORATION'S PETITION FOR  
REVIEW OF CENTRAL COAST REGIONAL  
BOARD DENIAL OF REQUEST TO MODIFY  
ALTERNATIVE WATER SUPPLY ORDER  
AND REQUEST FOR HEARING AND LEAVE  
TO PRESENT SUPPLEMENTAL EVIDENCE

[Water Code § 13320; 22 C.C.R. § 2050, *et seq.*]

**TO THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD:**

**I. INTRODUCTION**

Petitioner Olin Corporation ("Olin") respectfully submits to the State Water Resources Control Board ("State Board") this petition for review and request for hearing and leave to present supplemental evidence. Olin petitions for review of the April 29, 2004 decision of the Regional Water Quality Control Board, Central Coast Region ("Regional Board") denying Olin's request to modify the Regional Board's October 18, 2002 Alternative Water Supply Order to conform to the newly revised California Department of Health Services ("DHS") 6 ppb perchlorate action level ("Action Level") and final California Office of Environmental Health Hazard Assessment ("OEHHHA") public health goal ("PHG") issued on March 12, 2004. Despite the State of California having recently determined 6 ppb to be a safe level of perchlorate in

1 drinking water, the Regional Board continues to require Olin to provide replacement water at 4  
2 ppb. The Regional Board has improperly and inappropriately substituted its subjective judgment  
3 for California's determination, and did so without any reasonable factual basis and without any  
4 legal authority to do so under Water Code section 13267.

## 5 II. SUMMARY OF PETITION

6 By this petition, Olin seeks review of the Regional Board's April 29, 2004 action and  
7 decision refusing to modify its earlier October 18, 2002 Alternative Water Supply Order (the  
8 "April 29, 2004 Decision" or "Decision"). [Declaration of Martin "Kelly" J. McTigue  
9 ("McTigue Decl."), Exh. A.] On October 18, 2002, the Regional Board issued an order pursuant  
10 to Water Code section 13267 (the "October 18, 2002 Order" or "Alternative Water Supply  
11 Order") requiring Olin to provide treatment or an alternative water supply, e.g., bottled water, to  
12 all owners (and their tenants) of domestic water wells in which perchlorate concentrations  
13 exceeded the prevailing DHS Action Level or, as described by the Regional Board in its  
14 Alternative Water Supply Order; "... the level of contaminant in drinking water that is considered  
15 safe to people ingesting that water on a daily basis." [McTigue Decl., Exh. C.] The Regional  
16 Board based its October 18, 2002 Order solely on the prevailing DHS Action Level, which at that  
17 time was 4 ppb. In substance and effect, the Regional Board incorporated and adopted the  
18 prevailing Action Level in its Order as its own enforceable standard for requiring Olin to provide  
19 replacement water.

20 On March 12, 2004, however, after lengthy and extensive public and regulatory hearings,  
21 review and evaluation, OEHHA issued its formal and final PHG of 6 ppb, an exclusively health-  
22 based drinking water goal established by OEHHA without regard to cost impacts, as a  
23 concentration of perchlorate in drinking water that poses no significant health risk to individuals,  
24 including sensitive populations, e.g., infants, pregnant women and their fetuses, consuming the  
25 water on a daily basis over a lifetime. [McTigue Decl., Exh. I.] On the same day OEHHA  
26 established the 6 ppb PHG, DHS immediately revised its perchlorate Action Level from 4 ppb to  
27 6 ppb to conform to the PHG and initiated the requisite regulatory process to determine a drinking  
28 water maximum contaminant level ("MCL"). [McTigue Decl., Exhs. J and K.] Thus, on April 7,

1 2004, Olin formally requested the Regional Board modify its October 18, 2002 Order to also  
2 conform to the newly revised prevailing DHS Action Level and OEHHA PHG of 6 ppb.  
3 [McTigue Decl., Exh. B.]

4 On April 29, 2004, the Regional Board denied Olin's formal request to modify the  
5 alternative water supply standard from 4 ppb to 6 ppb to conform to the newly-revised Action  
6 Level. The Regional Board did so, despite the fact that the sole basis for its October 18, 2002  
7 Order was the then-existing DHS Action Level of 4 ppb. The Regional Board's decision denying  
8 Olin's requested modification is without a reasonable factual basis as the State of California has  
9 formally determined that water at or below the 6 ppb Action Level and PHG is safe to drink and,  
10 thus, does not require replacement. The effect of the Regional Board's Decision is to substitute  
11 its own subjective judgment for the State of California's determination as to the safe level of  
12 perchlorate in drinking water. The Regional Board's action denying Olin's request to modify the  
13 Regional Board's October 18, 2002 Alternative Water Supply Order is therefore inappropriate,  
14 improper and without legal basis.

### 15 **III. PETITION FOR REVIEW OF REGIONAL BOARD APRIL 29, 2004 DECISION**

#### 16 **A. OLIN CORPORATION**

17 Petitioner Olin Corporation owns the 13-acre property located at 425 Tennant Avenue,  
18 Morgan Hill, California ("Site"). Olin operated a facility that at various times was used to  
19 manufacture and package a variety of products, (e.g., signal flares for highway, marine and  
20 railway applications, clay targets and pool supplies) at the Site from 1956 to 1996. [Declaration  
21 of Richard McClure ("McClure Decl."), ¶ 3.] In 1998, Standard Fusee, an unrelated company,  
22 acquired Olin's signal flare business and operated the Site under lease from 1988 through  
23 property closure in 1996, at which time Standard Fusee formally closed the facility in accordance  
24 with Santa Clara County Central Fire Department procedures. Subsequently, in 1997-1998, Olin  
25 razed all buildings at the Site to prepare the property for redevelopment. [McClure Decl., ¶ 4.]  
26 Olin complied with all applicable environmental, health, safety and other laws during its tenure at  
27 the Site. The Olin Site and off-Site subject aquifer is located in the Pajaro River Hydrologic Unit,  
28 South Santa Clara Valley Area Boundary, Llagas Sub-Basin of the Central Coast Basin. The Site

1 is presently fenced and vacant except for the on-Site remediation equipment. [McClure Decl., ¶  
2 5.]

3 **B. SITE INVESTIGATION**

4 In August 2000, in the course of a due diligence investigation conducted as part of the  
5 process to sell the property, Olin first discovered and reported to the California Office of  
6 Emergency Services (OES) and Santa Clara County Environmental Health Department (Santa  
7 Clara EHD) the detection of perchlorate in soil and groundwater. Since February, 2001, under  
8 the supervision of and in cooperation with the Regional Board, Olin has undertaken an extensive  
9 investigation of the nature and extent of perchlorate in on-Site soil and groundwater and in off-  
10 Site groundwater, has implemented an on-Site ion exchange perchlorate removal and treatment  
11 system, and has installed three ion exchange perchlorate removal systems at the West San Martin  
12 Water Works and San Martin County Water District water supply wells. Olin has also funded a  
13 replacement well for the City of Morgan Hill Tennant Avenue well. [McClure Decl., ¶ 6.]

14 Olin's extensive on-Site and off-Site groundwater investigation and monitoring detected  
15 perchlorate downgradient of the Site in the Santa Clara Valley and into an area east of Gilroy. In  
16 December 2003, Olin implemented on-Site perchlorate source removal and remediation through  
17 construction of an on-Site groundwater containment and treatment system, which extracts  
18 groundwater at a rate of 125 gallons per minute from three extraction wells constructed in the two  
19 upper aquifer zones, to prevent any further off-Site migration of perchlorate. Olin has submitted  
20 a work plan to excavate perchlorate-containing soils to the residential Preliminary Remedial Goal  
21 of 7500 mg/kg and for in situ bioremediation of over 100,000 square feet of soil to further protect  
22 the groundwater resources in the Santa Clara Valley. [McClure Decl., ¶ 7.] Olin's investigation,  
23 monitoring and remediation costs to date are approximately \$8,250,000 (excluding the cost of  
24 providing alternative bottled water to off-Site well owners beyond the reach of the installed  
25 treatment systems). [McClure Decl., ¶ 8.]

26 At the present time, there are 547 off-Site wells with reported detections above 4 ppb. Of  
27 these 547 off-site wells, when last tested, 311 wells had perchlorate concentrations between 4 and  
28 6 ppb; and 236 wells had concentrations of more than 6 ppb. [McClure Decl., ¶ 9.]

1           **C.       ALTERNATE WATER SUPPLY**

2           At the present time, pursuant to the Regional Board's Decision and Order, Olin is  
3 providing bottled water to well owners and tenants at 311 wells which already meet the  
4 conservative 6 ppb PHG/Action Level set by the State of California. Through April, Olin's 2004  
5 cost to provide the alternative bottled water supply at the 547 wells exceeding 4 ppb has been  
6 \$296,000. Olin's projected bottled water cost for the remainder of 2004 is \$449,000. Thus,  
7 Olin's estimated annual cost to provide bottled water is \$745,000 at the 4 ppb replacement water  
8 level required by the Regional Board in its October 18, 2002 Order and April 29, 2004 Decision.  
9 [McClure Decl., ¶ 10.] In comparison, Olin's projected off-Site alternative bottled water supply  
10 cost for wells with concentrations at or above 6 ppb level (covering 236 wells in that category)  
11 would be \$321,000 per year. A chart comparing the number of wells and alternative water supply  
12 costs at the 4 ppb and 6 ppb levels is set out below.

13

14 <b>OFF-SITE ALTERNATIVE WATER SUPPLY STANDARD</b>	15 <b>NO. OF WELLS</b>	16 <b>ALTERNATIVE WATER SUPPLY PROJECTED COSTS</b>
17           4 ppb (pre-March 12, 2004 DHS Action 18           Level; basis of Regional Board 19           October 18, 2002 Order)	547	Annualized cost: \$745,000/year
20           6 ppb (revised March 12, 2004 DHS 21           Action Level and PHG; basis of Olin's 22           April 7, 2004 modification request to 23           Regional Board)	236	Annualized cost: \$321,000/year

24           As is apparent from the above chart, a 2 ppb increase from 4 ppb to 6 ppb in the off-Site  
25 alternate water supply standard significantly decreases Olin's cost of providing replacement water  
26 by \$424,000 while being completely protective of human health, including all sensitive  
27 populations as determined by California's OEHHA and DHS. [McClure Decl., ¶ 11.] Thus, to  
28 require Olin to continue to replace, with bottled water, well water which already meets the  
conservative PHG and Action Level is unreasonable, with no reasonable factual or legal basis and  
is an abuse of discretion by the Regional Board.

Olin's representatives authorized to receive notice are:

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14 **D. ACTION TO BE REVIEWED**

15 The action to be reviewed is the Regional Board's April 29, 2004 Decision denying Olin's  
16 request to conform the October 18, 2002 Order to the new perchlorate Action Level and PHG of  
17 6 ppb, and the Regional Board's direction in that decision that "Olin shall continue to supply  
18 bottled water to affected well owners whose wells test over 4 ppb, as outlined in our October 18,  
19 2002 letter." [McTigue Decl., Exh. A.] In its April 29, 2004 Decision, the Regional Board  
20 neither issued a new order pursuant to Water Code section 13304, nor provided any new or  
21 independent evidence or factual basis to support its decision and its earlier October 18, 2002  
22 Order issued solely pursuant to Water Code section 13267.

23 **E. RELIEF REQUESTED**

24 Olin requests the State Board either: (1) direct the Regional Board to vacate its April 29,  
25 2004 Decision and to grant Olin's April 7, 2004 request to modify the October 18, 2002 Order to  
26 conform to the new Action Level and PHG of 6 ppb and, thus, require Olin to supply alternative  
27 water to well owners only at wells exceeding 6 ppb, not 4 ppb; or (2) vacate both the Board's  
28 Decisions and Orders for lack of jurisdictional authority under Water Code section 13267.  
Alternatively, Olin requests the State Board directly provide the requested relief and modify or  
reform the October 18, 2002 Order or vacate the Decision and Order (as it pertains to alternative  
water replacement).

1           **F.       DATE OF ACTION**

2           The Regional Board issued its Decision on April 29, 2004 which Olin petitions to have  
3 reviewed. [McTigue Decl., Exh. A.]

4           **G.       THE REGIONAL BOARD'S ACTION WAS INAPPROPRIATE AND IMPROPER**

5           The Regional Board's April 29, 2004 Decision requiring Olin to continue to provide an  
6 alternative water supply for wells with perchlorate levels at the now unsupported and superseded  
7 4 ppb Action Level prescribed in the October 18, 2002 Order is inappropriate and improper,  
8 raising substantial and precedential issues of statewide importance for review.

9           First, by its April 29, 2004 Decision, the Regional Board abused its discretion as there is  
10 no reasonable factual basis or substantial evidence in the record to support its action, maintaining  
11 and continuing the now unsupported and superseded 4 ppb Action Level for supplying alternative  
12 water. In its October 18, 2002 Order, the Regional Board wedded the perchlorate concentration  
13 at which Olin was to provide well owners with alternative water to the DHS Action Level. Once  
14 the DHS formally issued a revised 6 ppb Action Level to conform to OEHHHA's 6 ppb PHG  
15 decision, the Regional Board lacked any discretion or reasonable factual basis to deny Olin's  
16 requested modification to revise its Alternative Water Supply Order to conform to the prevailing  
17 Action Level as well. In light of that revision, there is no basis or evidence to support the  
18 Regional Board's requirement that Olin continue to replace well water that is at or below the  
19 current Action Level and PHG of 6 ppb with alternative bottled water.

20           Second, by its April 29, 2004 Decision, the Regional Board abused its discretion by  
21 substituting its unsupported subjective judgment for California's determination provided in its  
22 PHG and revised Action Level as the standard governing the level of perchlorate in drinking  
23 water. The Regional Board had acknowledged California's authoritative role and deferred to its  
24 expertise in setting drinking water standards in its original Alternative Water Supply Order, and  
25 has no reasonable factual basis for imposing a lower alternative standard.

26           Third, by its April 29, 2004 Decision and Alternative Water Supply Order, the Regional  
27 Board exceeded its legal authority under Water Code section 13267 in requiring Olin to provide  
28 an alternative water supply for well water already meeting the exclusively health-based 6 ppb

1 PHG and Action Level. Absent issuance of a cleanup and abatement order based on and in  
2 compliance with Water Code section 13304, the regional Board abused its discretion by failing to  
3 proceed as required by law.

4 **H. MANNER IN WHICH OLIN HAS BEEN AGGRIEVED**

5 Olin has been aggrieved by the Regional Board's April 29, 2004 Decision which refused  
6 to conform the Alternative Water Supply Order to the revised DHS perchlorate Action Level of  
7 6 ppb, the drinking water perchlorate concentration level the Regional Board itself established  
8 and described as "the level of contaminant in drinking water that is considered safe to people  
9 ingesting that water on a daily basis." The Regional Board's April 29, 2004 Decision results in  
10 Olin being required to spend approximately \$424,000 more each year for bottled water than it  
11 would be required to spend for bottled water using the proper and appropriate 6 ppb Action Level  
12 standard.

13 **I. STATE BOARD ACTION REQUESTED**

14 Olin respectfully requests that the State Board either: (1) direct the Regional Board to  
15 vacate its April 29, 2004 Decision and grant Olin's April 7, 2004 request to modify the  
16 Alternative Water Supply Order to only require treatment or alternative water supply for wells  
17 exceeding the DHS 6 ppb Action Level; or (2) vacate both the Regional Board's Decision and  
18 Order as issued without legal authority and jurisdiction under Water Code section 13267.  
19 Alternatively, Olin requests the State Board directly order the aforesaid requested relief,  
20 modifying or reforming the Alternative Water Supply Order.

21 **J. STATEMENT OF POINTS AND AUTHORITIES**

22 A statement of points and authorities is filed with this Petition.

23 **K. COPY OF PETITION SENT TO REGIONAL BOARD**

24 A copy of this Petition has been sent to the Regional Board.

25 **L. STATEMENT CONCERNING SUBSTANTIVE ISSUES AND OBJECTIONS**

26 Most of the substantive issues and objections raised in this Petition were raised before the  
27 Regional Board in correspondence, discussions and at a meeting with the Regional Board staff on  
28



1 May 18, 2004. However, the Regional Board did not provide Olin a formal hearing at which  
2 evidence and testimony could be presented.

3 **M. REQUEST FOR HEARING AND LEAVE TO PRESENT SUPPLEMENTAL**  
4 **EVIDENCE**

5 Olin also requests that the State Board grant a hearing to consider testimony, other  
6 evidence and argument and to grant Olin leave to present supplemental evidence pursuant to  
7 23 C.C.R. 2050.6 and 2052(c). In making its April 29, 2004 Decision, the Regional Board did  
8 not provide Olin a hearing or allow Olin to formally submit evidence, testimony or argument.  
9 Subsequent to the Regional Board's April 29, 2004 Decision, Olin did request and obtain a  
10 meeting with the Regional Board's Executive Officer held on May 18, 2004 at which Olin was  
11 allowed only to informally discuss its position. As Olin was not provided a full and fair  
12 opportunity to present evidence, testimony and argument supporting its position as detailed above  
13 and as supported in the accompanying Memorandum of Points and Authorities, Request for  
14 Judicial Notice and Declarations of Martin "Kelly" J. McTigue and Richard W. McClure, Olin  
15 requests a hearing at which it may formally do so.

16 At the requested hearing, Olin intends to offer evidence and testimony in support of its  
17 contentions. First, Olin contends that the Regional Board abused its discretion by denying Olin's  
18 request to modify the Regional Board's Alternative Water Supply Order to conform the standard  
19 at which Olin was required to provide replacement bottled water to the effective perchlorate  
20 Action Level of 6 ppb, which conforms to the newly-issued PHG. In doing so, the Regional  
21 Board acted unreasonably and without a reasonable factual basis, and without sufficient or  
22 substantial evidence. In this regard, Olin believes that the Regional Board's Alternative Water  
23 Supply Order is facially clear that it is based solely on and governed by the prevailing health  
24 protective Action Level. However, if the State Board deems the Order to be ambiguous, Olin can  
25 and will present extrinsic evidence in the form of testimony by knowledgeable Olin  
26 representatives to prove that Olin's interpretation of the Regional Board's Alternative Water  
27 Supply Order is correct (which would require the Regional Board to have granted Olin's April 7,  
28 2004 modification request). If leave is granted, these witnesses will testify to: (1) the facts and

1 circumstances concerning the background, issuance, basis for, proper interpretation of and intent  
2 behind the Action Level standard in the Alternative Water Supply Order; and (2) background  
3 facts and circumstances as to other Regional Board actions prior to the April 29, 2004 Decision as  
4 well as subsequent to the March 12, 2004 change in the Action Level which support and  
5 corroborate Olin's position that the Regional Board intended its Alternative Water Supply Order  
6 to incorporate the prevailing Action Level as the sole basis of and for the replacement water  
7 standard.

8         Second, Olin contends that the Regional Board unreasonably and without any factual basis  
9 substituted its subjective judgment for California's determination of the perchlorate PHG for  
10 drinking water. To prove that the revised and prevailing Action Level (conforming to the newly-  
11 issued PHG) is fully protective of human health, Olin will present testimony by one or more  
12 experts in the fields of regulatory health science, toxicology and perchlorate risk assessment to  
13 explain and provide expert opinion on: (1) California's drinking water and regulatory programs  
14 and standards generally, and specifically as applicable to perchlorate, including Action Levels,  
15 PHGs and MCLs; (2) the potential health impacts and risks regarding perchlorate in drinking  
16 water at varying levels; (3) the bases, findings and conclusions of the State's March 12, 2004  
17 PHG risk assessment determination for perchlorate as related to the safety or risk, if any, of  
18 consuming perchlorate at varying levels in drinking water; and (4) the fact that providing  
19 replacement bottled water only to well owners with well water exceeding the 6 ppb Action Level  
20 and PHG is fully protective of human health.

21         In support of this contention, Olin has also submitted concurrently herewith a request for  
22 judicial notice for certain California regulatory documents pertaining to the State's actions in  
23 issuing and adopting the perchlorate PHG and revised Action Level as further supplemental  
24 evidence supporting its contentions. If leave is granted, Olin's witnesses will explain, interpret  
25 and provide their expert opinion on their actions and these subjects.

26         Finally, in its April 29, 2004 Decision, the Regional Board alleged that well sampling  
27 analytical error rates and seasonal fluctuations in well perchlorate concentrations supported  
28 maintaining a 4 ppb replacement water standard despite the Action Level having been revised to

1 6 ppb. Olin disagrees and contends such are irrelevant to the actual setting of the controlling  
2 health-based standard for requiring replacement water or any other regulatory standard. If leave  
3 is granted, Olin will present testimony by experts to refute the Regional Board's position and to  
4 support Olin's position.

5 **IV. CONCLUSION**

6 For the foregoing reasons, Olin requests the State Board to: (1) direct the Regional Board  
7 to vacate its April 29, 2004 Decision and grant Olin's April 7, 2004 request to modify the  
8 Regional Board's October 18, 2002 Order to provide treatment or an alternative water supply to  
9 well owners only when perchlorate well concentrations exceed the newly-revised 6 ppb Action  
10 Level and PHG; or (2) vacate both the Regional Board's Decision and Order. Alternatively, Olin  
11 requests the State Board directly, by its own order, provide the aforesaid relief.

12  
13 Dated: May 27 2004

Respectfully submitted,

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14  
15  
16  
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